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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------------|------------------|
| 10/038,796 | 12/31/2001 | Marcille F. Ruman | KCC 4767 (K.C. NO. 17,080) | 2941 |
| 321 | 7590 | 04/14/2005 | EXAMINER | |
| SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102 | | | REICHLE, KARIN M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3761 | |

DATE MAILED: 04/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------------|------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/038,796 | RUMAN ET AL. |
| | Examiner Karin M. Reichle | Art Unit 3761 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 03 February 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 17-19,25,27,30 and 31 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 17-19,25,27,30 and 31 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>12/6/04, 12/13/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statements filed 11-22-04 and 1-18-05 fails to comply with 37 CFR 1.97(c) because contrary to the statement as specified in 37 CFR 1.97(e) at least one of the references cited in each of the disclosures was previously cited, i.e. known, by Applicants in a IDS filed more than three months prior to the statement in each of the IDS in the instant application. Therefore such IDS need to be further processed, i.e. the fees as authorized by Applicant need to be processed. Accordingly, the IDS has been placed in the application file, but the information referred to therein has not been considered at this time. Once the fees required have been processed the IDS will be considered.

Claim Interpretation Section

2. The terminology “article … for personal wear” has not been specifically defined and therefore will be given its ordinary meaning, i.e. an article which is worn on the person. It is further noted that the claims do not require entanglement of the hook component and the loop component but rather fastenable engagement of the two components. It is also noted that the loop material itself is not required to be elastic only the component it is a part of is claimed as elastic in some of the claims, i.e. the substrate. The terminology “secured” has not been specifically defined and therefore will be interpreted as direct or indirect securement.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 17-19, 25, 27 and 30-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuen et al '595.

With regard to claims 17, 25-27 and 30, see Figure 7, col. 1, lines 13-28, col. 4, lines 14-46, i.e. the absorbent article for personal use is 70 and is formed to have a body 22 having first and second end regions, 28, 29, and comprises an inner layer 25, an outer layer 24 and an absorbent core 26, col. 13, line 38-col. 15, line 5, especially col. 14, lines 48-51, i.e. a mechanical fastening system is positioned on the body 22 including a loop component and a hook component, one is 53, 54, the other is 76, 78, 79 and 78 is secured to an elastic substrate, such that the substrate is capable of elastic stretch and retraction, col. 10, line 58-col. 11, line 30, i.e. the loop component is manually stretched around the wearer in a direction toward the downwardly slanted component and into opposed relationship thereto, engaged with the hook component and released so as to allow or provide an upward force or tension, i.e. a retractive force or urged sliding movement. With regard to claims 18-19 and 31, see col. 14, lines 29-41, i.e. stretching by about 280-300 %. It is the Examiner's first position that the Kuen et al reference explicitly teaches the claimed method. In any case the Kuen et al device is the same as the device described for carrying out the claimed method. Therefore there is sufficient factual basis to conclude the Kuen device would inherently perform the claimed process, see MPEP 2112.02. See also Response to Arguments section infra.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 25 and 27 are rejected under 35 U.S.C. 103(a) as obvious over Sommers et al '401.

See Figures, i.e. the retaining device is an article which is worn on the person and includes a hook component 30 and a loop material secured to a substrate, e.g. see col. 3, lines 60-62, col. 4, lines 40-60, and col. 7, lines 10-15, i.e. the looped surface of the stretch bonded laminate making up strip 10 and the remainder of the laminate making up the strip 10, and col. 10, lines 25-40, i.e. the fastening components of the article are secured in engagement by arranging, engaging and urging by contraction. See also col. 9, lines 52-59. Specifically since col. 10, lines 25-40 set forth that the elastic strip 10 is stretched and then released to allow retraction/contraction, the loop component, i.e. the looped surface of the stretch bonded laminate making up strip 10 and the remainder of the laminate making up the strip 10, is also stretched and then released and retracted/contracted. See also the discussion in the Response to Arguments infra. Sommers et al does not explicitly disclose contraction of the loop component at the seam. However it is well known to attach the ends of an elastic band under tension by grabbing either one of the ends and stretching it to bring it, adjacent where the band is grabbed, into engaging contact with the other end which is stationary or by grabbing both ends and stretching them to bring them into engaging contact with each other adjacent where they are grabbed. Therefore, to attach the ends of the elastic strip of Sommers under tension by stretching the one end including the loop component, bringing it into engaging contact with the other end to form a seam and

releasing the one end so that the one end, i.e. loop component, at the seam retracts/contracts, if not already, would be obvious to one of ordinary skill in the art in view of the well known interchangeability of methods of attachment.

Response to Arguments

7. Applicant's remarks with respect to the informalities have been noted but are deemed moot in that the issue discussed has not been reraised.

Applicant's remarks with regard to Sommers et al have been considered but are deemed not persuasive. Specifically with regard to claim 25 Applicants argue that Sommers et al does not teach contracting so as to urge sliding movement of one component relative to the other at the seam to promote increased engagement at the same. However, again, as set forth in the cited portions of '401 in the prior art rejection supra the loop component can be the surface of the stretch bonded laminate which makes up the strip 10, e.g. the gatherable layer. This gatherable layer/loop component slides to flatten out as the strip 10 is stretched around the wrist or arm to bring the two fastening components together, i.e. the point of origin of the stretch is one of the ends or some point therebetween, the loop component fastens to the hook component to form a seam and the loop component slides /retracts to return to its gathered state in the direction(s) opposite to the direction of the stretch, i.e. back to the point of origin of the stretch. When tension is released, the sliding or retraction, i.e. gathering of the gatherable layer, necessarily occurs to some degree along the entire strip between the stretch point of origin and the seam and thereby, contrary to Applicants remarks, there is an urging of sliding movement of one component relative to the other at the seam which sliding movement necessarily promotes

increased engagement (It is noted that the specific amount of sliding has not been claimed). It is further noted that Applicant has not pointed out the basis/support for the arguments in the paragraph bridging pages 9-10. With regard to the 103 rejection of claim 27, and now claim 25 also, with regard to Sommers, Applicant provided no specific argument as to why the method would not be obvious for the reasons set forth by the Examiner.

Applicant's arguments with respect to Kuen have also been considered but are deemed not persuasive in that they are narrower than the teachings of Keun, see portions cited *supra*, which teach the entire strap is elastic, i.e. stretchable, on one side and looped on the other side. Furthermore, during attachment, which Applicants argue as conventional, the strap/loop component is grasped at the free end, stretched around the wearer to bring the two fastening components together, i.e. the point of origin of the stretch is the back end, the strap/loop component fastens to the hook component to form a seam and the strap/loop component slides /retracts to return to its gathered state in the direction(s) opposite to the direction of the stretch, i.e. back to the point of origin of the stretch. The seam is between the point of origin and the free end, see locations of 57 and 56 in Figure 1 and compare to locations in Figure 7. When tension is released, the entire strip between the stretch point of origin and the free end, and thereby the seam, contrary to Applicants remarks, retracts, slides or contracts such that there is an urging of sliding movement of the/strap/loop component relative to the hook component at the seam which sliding movement necessarily promotes increased engagement (It is noted that the specific amount of sliding has not been claimed). Also, the Office has provided a basis in fact and/or technical reasoning to reasonably support the determination of inherency. See the discussion of Keun *supra*. Lastly it is noted with regard to claim 30 while such claim does require stretching,

engaging and allowing retraction of the loop component at the loop material the claim does not require the engaging of the looped material which is stretched with the hook component when the components are engaged or that all the loop material is stretched.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to claims 25 and 27.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (703) 308-1412. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Karin M. Rechle
Karin M. Rechle
Primary Examiner
Art Unit 3761

KMR
April 11, 2005